

CITY OF NEWBERG CITY COUNCIL MINUTES
APRIL 6, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

Work Session was held prior to the meeting. Budget prioritization was discussed; no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Bob Larson
	Bart Rierson	Stephen McKinney	Marc Shelton
	Wade Witherspoon		

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Elizabeth Comfort, Finance Director
	Howard Hamilton, Public Works Director	Norma Alley, City Recorder
		Jennifer Nelson, Recording Secretary

Others

Present: Joanne Wiitala, Beth Karecki, Letty Duran, Ping Khaw-Sutherland, Daniel Rouse, Dennis Lewis, Steven Abel, Charles McClure, Ellen McClure, Michael Ard, John Trudel, Vicki Shepherd, Marc Willcuts, Brett Veatch, Mike Gougler, Grace Schaad, Lewis Schaad, Sid Friedman, Roger Currier, Jim Hall, Steven L. Manners, Mike Willcuts, and Matt Willcuts.

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, discussed a protest to be held on April 15th on the lot across from City Hall. The Chehalem Cultural Center will hold their groundbreaking ceremony on April 17th at 3:00 PM. He asked Council members to notify him if they would be interested in riding on a fire truck for the Old Fashioned Festival this year, July 25th. He announced the Finance Director accepted a position at Friendsview and her last day will be May 8th, recruitment for a replacement will start tomorrow.

V. APPOINTMENTS

Appointment of Terry Hansen as the City Prosecutor.

Mr. Terrence Mahr, City Attorney, introduced Mr. Terry Hansen, the appointee for the position of City Prosecutor. Mr. Hansen spoke briefly before the Mayor swore him in.

VI. PUBLIC COMMENTS

Ms. Joanne Wiitala, Newberg Animal Shelter Friends, stated the current new building fund is at \$435,511 and the Mega Yard Sale fundraiser is scheduled for May 29-30 at Zion Lutheran Church. She

announced new positions were elected for NASF and the next meeting will be held on April 16th (see official meeting packet for full report).

Ms. Beth Karecki and Letty Duran, Your Community Mediators of Yamhill County (YCM), announced the celebration of YCM's 20th anniversary. Ms. Letty Duran offered updates on programs and a grant they are working on for training high school students to mediate. She read and presented a certificate to the Council (see official meeting packet for full report).

Ms. Ping Khaw-Sutherland, Census 2010, gave a short presentation on the new forms and early outreach for the Census 2010 program. She asked for the City's support and assistance with notifying the citizens and police enforcement that Census 2010 workers will be in the neighborhoods conducting their work.

Mr. Daniel Rouse, Walgreens Store Manager, spoke of the current sign ordinance hindering the usefulness of their reader board. He asked the Council to consider reducing the current ten minute restriction between messages to help get more messages out to the public and possibly increase the falling sales during slowed economic climate.

Councilor Marc Shelton asked what specific changes he would like to see made.

Mr. Rouse would like to see the time between displays to be changed to any other denomination less than 10 minutes. He also mentioned the sign is a little larger than allow, so they can only use a small portion of the space, although it was chosen to be that size because of visibility to the road.

Mayor Andrews asked if there was any way they could demonstrate an increase in sales as a result of products advertised on the reader board.

Mr. Rouse stated the sales are tracked in relation to the items displayed on the reader board and he has experienced customers coming in only as a result of something they saw on the reader board.

Mr. Dennis Lewis, Lewis Audio and Video, had similar concerns with the sign ordinance and his hope that his reader board and others can become more effective community tools by shortening the length of time between displays. He spoke of community announcements and Amber Alert messages as well as increased sales opportunities. He suggested a moratorium on the ten minute rule to utilize the technology available with these signs and to craft an ordinance that is more pro-business and pro-community regarding sign usage.

Discussions continued on this topic during Council Business at the end of the meeting.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2009-2832** authorizing the city manager to enter into a contract with Rutan Construction, Inc. for the construction of the West Sheridan/North Harrison Sewer Replacement Project in the amount of \$197,278.95.
2. Consider a motion approving **Resolution No. 2009-2833** authorizing the chief of police to submit an application to the COPS Hiring Recovery Program.

This item was removed from the Consent Calendar and placed under New Business after the Public Hearings.

3. Consider a motion approving **Resolution No. 2009-2834** appointing Boldt, Carlisle & Smith, LLC as the City's auditors.
4. Consider a motion accepting the Newberg Police Department's application for the Justice Assistance Grant.
5. Consider a motion creating and appointing a Student Traffic Safety Commission position.
6. Consider a motion approving City Council Minutes for March 2, 2009.
7. Consider a motion approving **Resolution No. 2009-2836** authorizing the city manager to enter into an agreement with the City of Dundee to provide Planning Services.

MOTION: Rierson/McKinney to approve **Resolution No. 2009-2832**, **Resolution No. 2009-2834**, the Newberg Police Department's application for the Justice Assistance Grant, creating and appointing a Student Traffic Safety Commission position, the City Council Minutes for March 2, 2009 as amended, and **Resolution No. 2009-2836**. (7 Yes/0 No) Motion carried.

VIII. PUBLIC HEARING

1. Consider a motion approving **Ordinance No. 2009-2712 and Order No. 2009-0020** annexing property located at 30295 Highway 99W and future comprehensive plan change/zone change upon inclusion in the Urban Reserve Area (McClure property).

TIME – 7:35 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated. Mr. Mahr made the required legal statements concerning quasi-judicial process.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Mayor Andrews spoke of exceptions allowed prior to Urban Reserve Area (URA) approval and if there are any rules against annexing property before it is in the URA. Staff stated there are no rules saying you cannot do this and the property will still go under the URA and Urban Growth Boundary (UGB) steps even if it is annexed into the City because there will be more abilities to do things on the property when it is in the UGB, like applying zoning designations and connecting to City sewer systems.

Councilor Shelton asked about access points and Benjamin Road. Staff stated Benjamin Road will be closed after the development of Gueldner Drive or possibly converted to a right in, right out only.

Councilor Wade Witherspoon clarified this would be a September special election and the applicant would bear the costs. Staff stated this was correct.

Mayor Andrews opened the public testimony.

Proponents:

Mr. Steve Abel, Attorney for applicants, discussed background and the development agreement between the McClure's and the City of Newberg to annex the property and have the subdivision built according to City codes. He referred to the agreement (packet pages 148-160) requiring the subdivision to be presented and approved by the County, the historic home being designated as a landmark, stream corridor designations, road improvements to Benjamin Road, widened roads, and a trail system throughout the development. As they have received the County's approval and they have accommodated their requirements to be contiguous with the City, they are seeking the final step in the agreement to have the property sent to the ballot to be voted on for annexation by the voters. He mentioned a pending appeal to the McClure's vested rights.

Councilor Shelton asked if the only thing the Council and McClure's were waiting on was the annexation that brought the property contiguous with the City. Staff replied this was correct.

Mr. Charles McClure, Applicant, offered some details on the history of the property and the conversations with the City of Newberg that led to the development agreement. He spoke of the growth of the City since they purchased the property and their desire to grow with the City and the properties that have been annexed around them. He spoke of the City's desire to have a say in the development of the area as the eastern gateway to Newberg. He spoke of the benefits for connecting to City sewer systems rather than installing septic tanks and the intended benefits for the property to the community by providing green construction and local jobs.

Mr. Michael Ard, Traffic Engineer with Lancaster Engineering, stated he was available for questions.

Councilor Shelton asked if he has been involved in conversations with ODOT when and if the bypass comes and how it would impact this area.

Mr. Ard said there are no guarantees but one option discussed is that Benjamin Road and the 99W intersection will be closed and an alternate connection will have to be made.

Mr. John Trudel, representative for Oxberg Lake Homeowners Association, testified to conditionally support this annexation. As with all of his testimonies, he stated the desire of the Oxberg Lake Estates to not be included within the City limits, he urged for protection of the aquifer, and for all parties to adhere to best practice agreements. He also requested the City place an ad in The Newberg Graphic, as with other annexations, showing what it is intended to look like so the voters can see what they are voting on.

Ms. Vicki Shepherd stated the plan is well thought out and will compliment the surrounding area, but she asked both the City and the County to conduct independent studies on Benjamin Road, which is a narrow road in need of repair, and who will assume that responsibility. She has concerns for this property being annexed before it has been included in the URA and UGB and would like to see it go through the proper channels first.

Councilor Bart Rierson stated that he thought she had been opposed to the McClure annexation in the past.

Ms. Shepherd replied she had not testified either for or against the McClure property before.

Mr. Mark Willcuts, Coyote Homes Inc., spoke of the uniqueness of this project in that it incorporates so many aspects of green development. It is well thought out and he felt it made more sense to annex the

property when the City would be dealing with only one property owner, the McClure's, rather than the several homeowners that would buy the homes in the future.

Mr. Brett Veach agreed this project was well conceived by a long term citizen of the community, who is more interested in the quality of the project rather than just maximizing their profit from the land. He said the City staff and the Planning Commission recognized the benefits of the intended development because it creates little impact to City services while providing an increased tax base; both the City and the McClure's benefit. He said that the McClure's have the right to build this anyway, but they chose to do it in partnership with the City and he encouraged the Council to place it on the ballot.

Mr. Mike Gougler stated he is a local developer and has no financial interest in the McClure property. He spoke his own experience with complying with City and State ordinances and commended this project for its value and innovation. He said it is not desirable when property comes into the City with roads and sanitation systems that do not comply with the City codes, which would be avoided with this partnership. He felt the McClure's have worked with the City to increase density, allow retirement housing, provide historical structures, and offer additional commerce. He felt it would be unconscionable for the City to not uphold the agreement and support the annexation.

Ms. Ellen McClure declined from giving further testimony.

Opponents:

Ms. Grace Schaad deferred her testimony to Mr. Sid Freidman.

Mr. Lewis Schaad spoke of the condition of Benjamin Road being very narrow and with poor visibility. He said something has to be done to improve that road, especially where it dips by the creek. He said he had not been aware of all the agreements made between the City and the McClure's so the other things he had to say were not applicable now.

Mr. Sid Friedman, representing 1000 Friends of Oregon, asked Council to reject sending this annexation to the ballot at this time because it was premature. He felt it would complicate an already complex process and would be illegal. He mentioned two pending appeals to determine if the McClure's have vested rights to the property, which may be overturned; he felt the Council should at least wait for the outcome of those appeals. He felt the development agreement was granting an exception that by ordinance cannot be exempted and felt this was in conflict with the City's comprehensive plan. He spoke of the plan designations and zoning and stated the state law requires the land to continue as planned for rural uses until included into the URA and UGB. He felt this was premature and illegal and the annexation should be done at a later time.

Councilor Denise Bacon asked when an answer is expected from the court of appeals.

Mr. Freidman stated the 1000 Friends of Oregon is not a part of this; briefing has occurred, but the appeal has not been argued yet.

Councilor Rierson asked him if he would be opposed if the annexation when into the URA and UGB first.

Mr. Freidman replied he would not be opposed and felt it should be brought into the City if it followed the correct process.

Undecided:

Mr. Roger Carrier stated if the property is annexed and connected to City water, pretreatment needs to occur at the winery. He spoke of the McClure's being able to develop without annexation and without the City having a say in the process. He suggested tabling the matter until the determinations are made in the court of appeals and rezoning of the parcel is completed for the best use of the property. He felt the annexation was superseding the normal process for all URA and UGB properties and did not feel 37 homes on 69 acres meets the current density standards for affordable housing and the needs of the community. He also wondered what the excuse would be for other property owners wishing to do the same thing and he warned the Council to not allow staff to force them into a decision for the purpose of timing.

Rebuttal:

Mr. McClure spoke of their high probability for success in the court of appeals and wondered who would want to buy 60 acres of farmland that could no longer grow filberts and was not good for wine grapes either; he did not agree this is prime farm land by any means.

Mr. Abel stated the 2007 development agreement allowed for modification provided annexation occurred when the property became contiguous with the City. The McClure's are not obligated to submit for annexation and pointed out this agreement was not argued against two years ago by its opponents today. He felt they were prepared for the appeals because this is what is best for both parties; the McClure's and the community of Newberg.

Mayor Andrews asked about improvements to Benjamin Road.

Mr. Ard spoke of the quarter mile referred to within the testimony and replied there were no specific conditions and development can occur with or without improvements to Benjamin Road. When Gueldner Drive goes in then Benjamin Road will be closed and there will be no need to make improvements if it is a dead end road. He said this should all lie at the time of application for the development on that parcel.

Mr. McClure added the improvements required by the County were from the corner, north to the barn on Benjamin Road and the road will be improved when it is developed.

Councilor Shelton asked if a permit was acquired for the driveway on the historical portion of the property.

Mr. Ard it was grandfathered and documentation has to be presented to ODOT, but it was installed before an application process existed.

Mayor Andrews closed the public testimony.

Mr. Mahr asked for a recess for the applicant to discuss the waiver of rights to submit further written testimony because of the testimony provided by the 1000 Friends of Oregon. Mayor Andrews recessed from 9:00 PM to 9:08 PM.

Mr. Abel stated the applicant would waive the right to supplement record if Council makes a tentative decision tonight; and he would like to work with staff to revise the findings to present in two weeks.

Mr. Mahr clarified the Council could make a tentative decision and allow staff to amend the findings to reflect the testimony received this evening.

Mr. Brierley stated the staff recommendations to implement the provisions of the development agreement as approved by the Planning Commission by tentatively approving the annexation tonight with an added direction to staff to return with a final ordinance and order with the revised findings in two weeks.

Mayor Andrews closed the public hearing.

Mr. Mahr reminded the Council that they would still not be in a position to discuss or deliberate this even with a tentative decision until the final written decision is made in two weeks or it would be considered ex parte contact.

MOTION: Shelton/Larson to verbally approve **Order No. 2009-0020** and remand it back to the Planning Department to develop revised findings for presentation at the April 20, 2009 City Council meeting.

Councilor McKinney supported staff coming back with a revised order.

Councilor Rierson supported the order and bringing back the revised findings. He felt this was best for the citizens of Newberg because of the low cost of services compared to revenue generated and to have a sewer hook-up when it is within the UGB rather than having new homes with septic tanks. He said this could be developed right now under Measure 37 but working together is a better option.

Councilor Bob Larson agreed with order and revisions and said that the voters would have the final approval.

Councilor Shelton felt the City entered into an agreement with the McClure's and should operate in good faith to that agreement.

Councilor Bacon also stated she would not go against an agreement made by a prior Council.

Mayor Andrews also supported the agreement feeling it was a good blend of benefits for all involved and that the motion was appropriate.

VOTE: To verbally approve **Order No. 2009-0020** and remand it back to the Planning Department to develop revised findings for presentation at the April 20, 2009 City Council meeting. (7 Yes/0 No) Motion carried.

MOTION: Rierson/Shelton to verbally approve **Ordinance No. 2009-2712** annexing property located at 30295 Highway 99W and future comprehensive plan change/zone change upon inclusion in the Urban Reserve Area (McClure property) and remand it back to staff to develop revised findings for presentation at the April 20, 2009 City Council meeting. (7 Yes/0 No) Motion carried.

2. Consider a motion approving **Order No. 2009-0019** approving a zone change for two properties located at 611 and 617 North Main Street from R-2 to R-P.

TIME – 9:23 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated. Mr. Mahr made the required legal statements concerning quasi-judicial process.

Mr. Brierley presented the staff report (see official meeting packet for full report).

Councilor Larson asked if the owners were planning to tear the church down or the other buildings. Staff stated they did not, their intent is to market the property and sell it; the church is historic and there is value in the associated structures.

Mayor Andrews opened the public testimony.

Mr. Jim Hall, representing Dr. Robert Pamplin, gave some history of the property and the liabilities being faced from operating a donated food ministry with the recent salmonella outbreaks. They are having difficulty selling the property for the currently zoned allowed uses and would like to offer potential buyers a greater variety of uses to make it more marketable for faster sale.

Mr. Steven Manners said he owns property to the north. He felt the property in question and the buildings on it were quite nice and he supports what they have been using the buildings for so far. He agrees with the uses allowed with the zone change.

Mayor Andrews closed public testimony. Mr. Hall waived his right to submit further information. Mr. Brierley recommended approval.

MOTION: Larson/Rierson to approve **Order No. 2009-0019** approving a zone change for two properties located at 611 and 617 North Main Street from R-2 to R-P. (7 Yes/0 No) Motion carried.

IX. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2009-2833** authorizing the chief of police to submit an application to the COPS Hiring Recovery Program.

TIME – 9:51 PM

Mr. Brian Casey, Police Chief, presented the staff report clarifying that this only grants him permission to apply for the grant; it does not authorize him to hire an officer or implement a public safety fee (see official meeting packet for full report).

Councilor Witherspoon said he requested the item be pulled because he was unsure if the public safety fee was part of the resolution. Staff assured him this only grants him permission to apply for the grant, it does not authorize him to hire.

Councilor Larson asked if the public safety fee would start as soon as the grant is approved. Staff stated if the grant was received, then a public safety fee would be implemented per month on the water bill by one dollar this year, two in the next, and three dollars in the third year.

Councilor Shelton asked about another grant in late 1990's for an additional officer that stipulated the City would need to be able to maintain the officer and if this grant also required this. Staff that grant required the City to make a best effort to maintain the officer; however, the City did not plan for the expenses and lost all three officers acquired with the grant monies. The City was not penalized. The public safety fee is a way to build those funds when the grant money runs out in order to maintain the officers hired.

Mayor asked if this grant requires at least one year for retention. Staff replied it does.

Councilor Rierson said he supports adding officers even if the grant is not received and he likes the idea of putting money away to fund their salaries.

Councilor Shelton supports the permission to write the grant if staff would bring the details back to Council if it was awarded for formal approval. He hoped the timing worked out so Council would know before the budget is finalized. Staff said it would be around mid-June, so it will be close; September 1st is the date set to start hiring.

Mayor Andrews asked that everyone make sure they are consistent in referring to this as a public safety fee and not a utility fee and clarified the fee would increase incrementally from one dollar a month to two after the first year and then to three dollars a month in the third year. Staff confirmed this was true.

Councilor McKinney supported adding three officers whether or not we get this grant.

MOTION: Witherspoon/Larson to approve **Resolution No. 2009-2833** authorizing the chief of police to submit an application to the COPS Hiring Recovery Program. (7 Yes/0 No) Motion carried.

IX. COUNCIL BUSINESS

TIME – 10:06 PM

Mr. Danicic presented a brief report on the request from the Orchard Lair subdivision developers to reduce some of the City fees in order to assist in building a large portion of the subdivision all at once within nine months. He pointed out the benefits for the City to have the subdivision completed and to stimulate the local economy by employing local contractors. He spoke of creative ways to make this project work for affordable housing, like lease to own options and how the City could help by deferring SDC's until the Certificate of Occupancy or delaying them until lease turns to ownership. He also suggested limiting how many would be affordable; maybe ten to fifteen units only. He asked for some suggestions from Council for what things they would like to see for staff to return with a formal proposal and if they will consider the request.

Councilor Rierson said he would like to see some way to address the need to fund City services and other creative ways to get people into the homes within the proposal.

Mr. Mark Willcuts offered a brief background and some of the creative efforts he and his brothers have been making to bring affordable housing to Newberg. He spoke of gathering investors and getting the bank to allow them to pay off their construction loans in five years, rather than in the normal twelve month period.

Discussions followed about possible options for the City to assist such as holding to the 2008 fee schedule or rolling back to the 2007 fees, which would provide a \$250,000 benefit to assist with the total costs. The Council gave a consensus to allow staff to present a formal proposal.

Mr. Mahr discussed concerns about creating a public forum with the use of the property across from City Hall for a "tea party" protest and brought up previous discussions for developing a public gathering ordinance. Mayor Andrews stated he would like to open those discussions back up by looking at what other municipalities are doing.

Councilor Shelton suggested postponing the trip to Japan, since the trip to Poysdorf, Austria falls within the same year, in an effort to prioritize spending. He also spoke of dropping the Council meal program in order to reduce spending as well; setting an example in tough economic times and encouraging good public relations.

Discussions continued from concerns brought up during the Public Comments about reducing the ten minute rule for digital signs and reader boards.

Mayor Andrews suggested considering a moratorium on the rule and have a sunset on it.


Councilor Shelton added some research should also be conducted to see what the results are in sales and such if the ten minute rule is reduced.

Mr. Danicic said staff would return with a formal resolution to consider a pilot program to allow more leeway on the existing sign code timing restrictions for reader board type signs including a way to collect data.

X. ADJOURNMENT

MOTION: Larson/Shelton to adjourn at 10:58 PM (7 Yes/0 No) Motion carried.

ADOPTED by the Newberg City Council this 4th day of May, 2009.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 7th day of May, 2009.



Bob Andrews, Mayor